IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.862 OF 2006.
ALONGWITH
CIVIL APPLICATION NO. 158 OF 2006
IN
SECOND APPEAL NO. 862 OF 2006

Shri Anant Shamrao Mhatre
and Ors. ....Appellants.

V/s

Kamlakar Dharma Wagh & Ors. .....
Respondents.

Mr. M.A. Patil for the appellants.

Mr. V.G. Gavnekar for Respondent Nos. 1 to 4.

CORAM: V.M. KANADE, J.
DATE : 13th July, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of appellants and the learned Counsel appearing on behalf of respondents.

2. Appellants - original Plaintiffs are challenging the judgment and order passed by the Trial Court whereby their suit for specific performance of agreement dated 24/04/1991 was dismissed and the counter-claim filed by respondents was partly allowed. They have also challenged the order passed by the Lower Appellate Court which has partly

dismissed their appeal. Decree, on the counter claim, however, was set aside by the Lower Appellate Court.

3. It is submitted by the learned Counsel appearing on behalf of the appellants that both the Courts below have erred in recording a finding that the appellants - plaintiffs were not ready and willing to perform their part of the contract. He also invited my attention to the finding recorded by the Trial Court as also the Lower Appellate Court. He submitted that one of the conditions of the agreement was that the plaintiffs were to obtain permission under section 43 of the Bombay Tenancy and Agricultural Lands Act from the competent authority. He submitted that the evidence on record clearly established that the plaintiffs had pursued their application with the competent authority. He submitted that both the Courts below, however, had given a finding to the contrary.

4. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the appellants. Both the Courts below have appreciated the evidence on record and have given a concurrent finding that the appellants - original plaintiffs were not ready and willing to perform their part of the contract. The agreement was executed on 24/04/1991. Appellants were to obtain necessary permission from the competent authority. Since they have not obtained the said permission, respondents gave a legal notice dated 18/04/1994. However, no reply was given by the appellants to the said notice. Thereafter, second notice was also served

on the appellants dated 29/11/1994. Even, thereafter, no steps were taken by the plaintiffs to obtain necessary permission. Both the lower Courts have considered this aspect in detail and have recorded a finding of fact against appellants - original plaintiffs. Hence, no substantial question of law is raised in this second appeal. Second appeal is dismissed.

5. Since the second appeal is dismissed, Civil Application does not survive and the same is accordingly dismissed.

(V. M. KANADE, J.)